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OFFICE OF THE ATTORNEY GENERAL



JEFF SESSIONS
ATTORNEY GENERAL
STATE OF ALABAMA

APR 17 1995

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (334) 242-7300

Honorable James A. Dunn, Chairman
Calhoun County Commission
1702 Noble Street, Suite 103
Anniston, Alabama 36201

Funerals - Counties -
Indigents - Funds- Disposal
of Remains

Counties may provide for the disposal of the remains of an indigent person by cremation pursuant to § 38-8-2, Code of Alabama 1975, with restrictions.

Dear Mr. Dunn:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTIONS

(1) May the County, pursuant to the requirements of § 38-8-2, supra, provide for the cremation and suitable and legal interment or other disposal of the remains after cremation of persons having no estate and leaving no relative with the ability or estate adequate to defray his or her burial expenses?

(2) May the County, pursuant to the requirements of § 38-8-2, supra, only provide for the cremation and suitable and legal interment or other disposal of

the remains after cremation of persons having no estate and leaving no relatives with the ability or estate adequate to defray his or her burial expenses?

(3) May the County, pursuant to § 38-8-2, supra, provide for the cremation and suitable and legal interment or other disposal of the remains after cremation of persons having no estate and leaving no relatives with the ability or estate adequate to defray his or her burial expenses other than for the remains of persons whose religious beliefs forbid or would be violated by cremation of their remains, for whose remains the County would provide for burial in a casket or coffin in a cemetery?

FACTS AND ANALYSIS

The statute which provides the counties with authority to dispose of the remains of certain persons is § 38-8-2, Code of Alabama 1975. It states:

"Upon the decease of any person having no estate and leaving no relatives in the county with the ability or estate adequate to defray his necessary burial expenses, such necessary burial expenses are a charge upon the county in which such death shall take place, and the county commission, upon the presentation of the account of such burial expenses shall make payment therefor."

According to this statute the county has the requirement to provide for the expenses necessary for burial of certain persons whose family or estate are unable to pay. Since the time that this statute was last amended in 1940, the Alabama Legislature has spoken several times to the allowance of cremation as a proper means of disposal of dead human remains.

For example, § 34-13-1(a)(6) includes "crematories" and "cremation" as the type of entity and operation, respectively, which a "cemetery authority" may engage in Alabama. The State

Board of Health is now directed to regulate cremation to protect the health and welfare of the public and a "burial or removal permit" must be issued by its local registrar prior to cremation taking place. See §§ 22-19-1 through -3, Code of Alabama 1975.

The Legislature has also provided that unclaimed dead human bodies, used for scientific study by certain medical schools in accordance with §§ 22-19-20 through 30, Code of Alabama 1975, may be cremated by said schools. Section 22-19-27, Code of Alabama 1975. Finally, the Legislature has required that prior to the cremation of a dead body that additional authorization must be obtained from the county medical examiner, state medical examiner, or coroner, over and above the medical certification of cause of death entered on the death certificate by the physician or either of the three, above-named officials. See § 22-9A-16, Code of Alabama 1975.

Therefore, it is the opinion of the Attorney General that the term "burial" in § 38-8-2, Code of Alabama 1975, can be viewed more broadly as meaning disposal of remains. This means that so long as the proper authority and registration and practices are complied with to protect the health, safety and welfare of the citizens of Alabama, such as those required by § 22-9A-16 and 22-19-1, et seq., Code of Alabama 1975, discussed above, and any other applicable laws, that counties may provide for disposal of the remains of persons having no estate and leaving no relatives with the ability or estate adequate to defray his or her burial expenses, by cremation.

Specifically, the answer to your Question (1) is yes. The answer to Question (2) is no, to the extent that circumstances such as those contemplated in Question (3) exist, and of which the county is or should reasonably be aware. The answer to question (3) is yes.

CONCLUSION

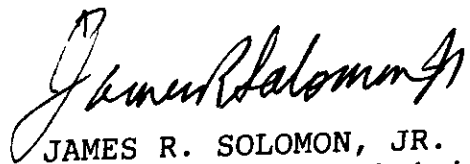
Counties may provide for the disposal of dead human remains by cremation for those whose families or estates are unable to cover the expenses therefor, pursuant to § 38-8-2, Code of Alabama 1975, so long as the laws protecting the health, safety and welfare of the public, including those specifically applicable to cremation are

followed and cremation is not forbidden by the religious beliefs of the deceased.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact Courtney W. Tarver of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:

A handwritten signature in cursive script, appearing to read "James R. Solomon, Jr.", written in dark ink.

JAMES R. SOLOMON, JR.
Chief, Opinions Division

JS/CWT/sc
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